

## REMARKS/ARGUMENTS

Claims 1, 5, 8, 11-22, and 36 are pending in this application. Claims 1, 5, 8, 11-22, and 36 stand rejected. The issue raised in the Office Action (Current Action) of April 9, 2010 is as follows:

- \* Claims 1, 5, 8, 11-22, and 36 are rejected under 35 U.S.C. § 103(a) as being unpatentable.

In response, Applicant respectfully traverses the outstanding claim rejection and requests reconsideration and withdrawal in light of the amendment to the claims and remarks presented herein.

### ***REJECTIONS UNDER 35 U.S.C. § 103***

***Claims 1, 5, 8, 11-22, and 36 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fleischner, and Brand and further in view of Cho et al.***

Claims 1, 5, 8, 11-22, and 36 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,291,533 to Fleischner (hereinafter Fleischner) in view of *An Outstanding Food Source of Vitamin C, The Lancet*, Vol. 320 Issue 833, p. 873 to Brand et al. (hereinafter Brand) and further in view of U.S. Patent Publication No. 2002/0192314 to Cho et al. (hereinafter Cho).

When determining whether a claim is obvious, an examiner must make “a searching comparison of the claimed invention – *including all its limitations* – with the teaching of the prior art.” *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (emphasis added). Thus, “obviousness requires a suggestion of all limitations in a claim.” *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (citing *In re Royka*, 490 F.2d 981, 985 (CCPA 1974)). Moreover, as the Supreme Court recently stated, “*there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.*” *KSR Int’l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (emphasis added)).

In response to the Applicants’ arguments the Current Action maintains the rejections because the “applicant has provided no proof or explanation as to why their

results are unexpected,” and “has not stated in the claim what exactly the unexpected results is” (Current Action at page 2). Applicants traverse this requirement, however, solely to move prosecution forward, reserving the right to file a continuation application for the current claims, and not disclaiming any equivalents, the claim has been amended to include the phrase “and act in synergy to provide a higher antioxidant capacity”, which is supported in the specification in, e.g., the figures (e.g., [0031]), and Example 2 entitled “Synergistic Antioxidant Composition” ([0111]-[0117]).

The combination simply fails to disclose each and every limitation of the present invention and even if it were disclosed there is nothing in the combination of references to motivate the skilled artisan to look to the references to cure the deficiencies in the references, namely, that the combination of antioxidants in the claimed amounts and ratios are synergistic.

Fleischner may disclose a composition of matter intended to supplement the diet, however that composition merely discloses the following ingredients: Vitamin K, ginseng root, Green tea leaf, Hawthorn berry, Panccatin, Slippery elm Dark, Linden flower, Sarsapailla root, Peppermint leaf, Gingae root, Fenugreek seed, Parsley leaf, MulDerry fruit, Hops strobile, Cayenne Pepper, licorice root, Dandelion root, Quercetin dihydrate, and Bladderwrack kelp and is labeled for use by humans having at least one specific antigen blood type, as defined by blood antigen specificity.

The addition of Brand and Cho do not cure these deficiencies and fails to provide a motivation for combining the specific combination of ingredients claimed herein.

Accordingly, claims 1, 5, 8, 11-22 and 36 are not rendered obvious by Fleischner, Brand and Cho, or any combination thereof. Applicants respectfully request the Examiner withdraw the rejection under 35 U.S.C. § 103(a).

## CONCLUSION

In light of the remarks and arguments presented above, Applicants respectfully submit that the claims in the Application are in condition for allowance. Claims 1, 5, 8, 11-22, and 36 have been allowed. Favorable consideration and allowance of the pending claims 1, 5, 8, 11-22, and 36 are therefore respectfully requested.

In view of the above, Applicant believes the pending Application is in condition for allowance. Applicant believes this paper is being filed with all required fees. However, if any additional fee is due, including those for an extension of time please charge any fees required or credit any overpayment to Chalker Flores, LLP's Deposit Account No. 50-4863 during the pendency of this Application pursuant to 37 CFR 1.16 through 1.21 inclusive, and any other section in Title 37 of the Code of Federal Regulations that may regulate fees. If an extension of time is required with this response but is not included, Applicants hereby petition for a Request for Extension of Time under 37 CFR 1.136(a).

If the Examiner has any questions or comments, or if further clarification is required, it is requested that the Examiner contact the undersigned at the telephone number listed below.

Dated: July 9, 2010.

Respectfully submitted,  
CHALKER FLORES, LLP



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